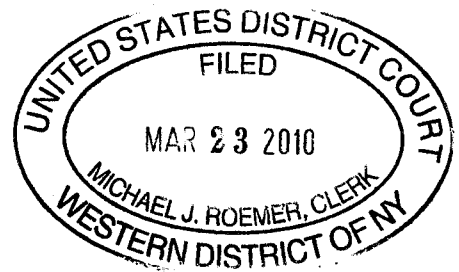


UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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B.J.S., Individually and on behalf  
of N.S., a child with a disability,

Plaintiff,

v.

ORDER  
08-CV-513A

THE STATE EDUCATION DEPARTMENT/  
UNIVERSITY OF THE STATE OF NEW YORK,  
PAUL F. KELLY, State Review Officer,  
RICHARD P. MILLS, Commissioner of Education,  
SPRINGVILLE-GRIFFITH INSTITUTE CENTRAL  
SCHOOL DISTRICT BOARD OF EDUCATION,

Defendants.

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Plaintiff commenced this action against the State Education Department, Paul F. Kelly, Richard P. Mills (collectively, the "State Defendants") and the Springville-Griffith Institute Central School District ("School District"). This case was referred to Magistrate Judge Leslie G. Foschio pursuant to 28 U.S.C. § 636(b)(1). On June 12, 2009, the State Defendants filed a motion to dismiss all of plaintiff's claims against them. On February 9, 2010, Magistrate Judge Foschio issued a Report and Recommendation, recommending that the motion to dismiss be granted and that all of plaintiff's claims against the State Defendants be dismissed.

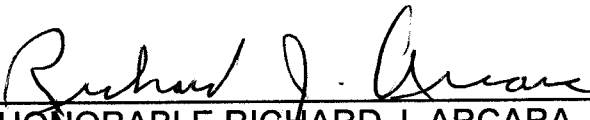
The State Defendants filed limited objections to Magistrate Judge's Report

and Recommendation, and plaintiff did not file any objections. The Court deemed oral argument unnecessary.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon a *de novo* review of the Report and Recommendation, and after reviewing the State Defendants' limited objections, the Court grants the State Defendants' motion to dismiss for the reasons stated in Magistrate Judge Foschio's Report and Recommendation. The Court finds it unnecessary to resolve the State Defendants' limited objections because the objected-to portions are merely dicta and do not impact the ultimate resolution of the motion.

Accordingly, for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, the State Defendants' motion to dismiss is granted, and plaintiff's claims against State Education Department, Paul F. Kelly and Richard P. Mills are dismissed.

IT IS SO ORDERED.

  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: March 23, 2010